



Docket No.: 0054-0235P  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Takeshi MIO et al.

Application No.: 09/877,006

Confirmation No.: 1713

Filed: June 11, 2001

Art Unit: 2621

For: PROGRAM RECORDING/REPRODUCING  
METHOD AND APPARATUS

Examiner: James A. Fletcher

**REPLY BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Reply Brief is respectfully submitted on behalf of Appellants in response to the newly submitted arguments of the Examiner in the Examiner's Answer mailed June 5, 2007, which was issued in connection with the above-identified application. In accordance with 37 C.F.R. §41.41, these new points of argument are responded to in the instant Reply Brief.

Only one copy of this Reply Brief is submitted as it is filed after the date of the new rules.

**Status of Claims**

Claims 3-5, 7-11 and 13 are pending in this application. Claims 1, 8 and 11 are independent claims.

Claims 3, 4, 7, 8, 10, 11 and 13 are rejected under 35 U.S.C. §102(b) to Sakazaki; claim 5 is rejected under 35 U.S.C. §103(a) to Sakazaki; and claim 9 is rejected under 35 U.S.C. §103(a) to Sakazaki in view of Watkinson.

**Issues on Appeal**

Whether:

1. Claims 3, 4, 7, 8, 10, 11, and 13 are not anticipated by Sakazaki because Sakazaki fails to disclose each and every claimed element;
2. Claim 5 is patentable over Sakazaki because the Examiner fails to establish a *prima facie* case of obviousness; and
3. Claim 9 is patentable over the combination of Sakazaki and Watkinson because the Examiner fails to establish a *prima facie* case of obviousness.

**New Points of Argument Raised by the Examiner's Answer**

Appellants are providing this Reply Brief to respond to the new points raised in the Examiner's Answer.

First of all, Appellants agree with the paragraphs (1)-(8) of the Examiner's Answer.

Secondly, Appellants note that in paragraph (9) the Examiner rephrases and maintains the Final Rejection date September 18, 2006.

Thirdly, Appellants respectfully disagree with the specific new points of response to arguments raised on pages 10-14 of the Examiner's Answer.

Specifically, Appellants disagree with the following new points raised:

1. The Examiner alleges that the term control packet is defined in a way not consistent with the [ordinary] meaning to those of skill in the art (see, Examiner's Answer page 10);

2. The Examiner alleges that the term format is not defined or otherwise sufficiently understood (see, Examiner's Answer page 11);
3. The Examiner alleges that the term "the same format" is not defined or sufficiently otherwise understood (see, Examiner's Answer page 11); and
4. The Examiner alleges that the mere statement of a feature being found within a second reference (Wilkinson) is sufficient to provide the motivation to modify a first reference (Sakazaki) (see, Examiner's Answer pages 11-14).

**Appellants' Response to Allegation (1)**

The Examiner asserts that the Appellants' specification provides the only basis for support for the term "control packet" as recited in the claims, and as applied to a MPEG packet being a "control packet". Furthermore, the Examiner asserts that the term "control packet" is defined in a variety of ways (within the specification), and does not appear to have a consistent meaning to those of skill in the art, including data structures that are formats different from the program packets.

Appellants' representative respectfully disagrees. The term "control packet" is both broadly described within the specification, and recognized pursuant to the well known MPEG standards, therefore Appellants' representative asserts that the term "control packet" is widely understood with those skilled artisans of the MPEG technology. Furthermore, Appellants' representative respectfully asserts that the position taken by the Examiner, wherein "control packet" is inconsistent with the meaning to those of skill in the art, is incorrect, and that the Examiner has improperly interpreted the term.

Specifically, the term "control packet", may be understood as a packet of information for a specific management entity. In fact, the Appellants' reliance upon the "control packet" may be illustrated as providing a data packet to convey specific information back to a management entity. See, for example, originally-filed specification, page 6, lines 1-4 and lines 16-21. In

addition, the description of a control packet is prevalent throughout the originally-filed specification, and is generally essential to both the understanding of Appellants' claimed invention, as with all MPEG systems with architecture employing a plurality of program signals. See, for example, originally filed specification, page 9, lines 14-19; and ISO/IEC 13818 for a description of the International Standard.

### **Appellants' Response to Allegation (2)**

The Examiner maintains his position that he has validly interpreted "format" and has similarly met his burden by applying Sakazaki in view of his interpretation of the term "format".

The Examiner further asserts that the Appellants' representative's statement concerning the discarded packet count being recorded in a "control packet" does flow from the reliance upon disclosure of Sakazaki based upon the lack of explicit disclosure by the Appellants. The Examiner has incorrectly asserted that the Appellants used the "format" without sufficient definition. While assuming, *in arguendo*, that Appellants did not provide an explicit definition of "format", it is well-established within the MPEG standard, and absent some explicit definition to the contrary, the Appellants are allowed to rely upon the well-established standards.

Appellants' representative specifically draws the Examiner's attention to the specification as filed, page 11, and line 6, to indicate that in general, the term format is clearly supported in the specification, as well as broadly understood by artisans in the technology field. In general, wherein a control packet is structured in the same format as a program packet, the speed at which the program packets maybe processed, that is, for example converted, operates more efficiently than if one format must be transposed into another format prior to recording or reproducing pursuant to the program. Further, the term "format" as is widely used and understood by those skilled artisans in MPEG technology, relates to one specific part of the MPEG standard, specifically the system part, as defined by two distinct but related *container formats*. The two container formats are a transport stream and a program stream. See, ISO/IEC 13818.

**Appellants' Response to Allegation (3)**

In response to the Examiner's assertion that the Appellants have failed to explicitly disclose what is meant by "the same format" in regards to Applicants claimed invention and Appellants assertion that Sakazaki does not explicitly disclose the format of the discarded packet count, Appellants representative respectfully direct the Examiner to, for example, the originally filed specification, page 11, line 6. The system generally described in the specification, includes a program recording and reproduction apparatus, and further includes a decoding unit 4, and a reproduction PSI (program specific information) processing unit 5. See, for example, page 10, lines 5-9. Accordingly, Appellants assert that the system will operate, in general, with data signals, being of the same format.

**Appellants' Response to Allegation (4)**


In response to the Examiner's assertion that Watkinson is applied to Sakazaki in order to provide what is lacking in Sakazaki, for example the lack of any disclosure of a recording unit that records a stream management packet as a first recording packet of the predetermined coded program signal as claimed.

Appellants continue to maintain, and for at least the same reasons asserted previously, that the Examiner has failed to meet his burden under a prima facie case of obviousness. Specifically, the mere recitation that it would have been obviousness to one that is skilled in the art to modify Sakazaki "in order to specify the first recording packet being a stream management packet", or "detecting the speed of the input signal by means of time a management information, that the recoded data stream comply with the MPEG2 standard," or "that a program packet containing time management information be recorded after the stream management packet," provides no motivation for such a modification. Specifically, the mere fact that individual elements were individually known and the art is not sufficient to establish a prima facie case of obviousness.

For at least these same reasons, Appellants representative also respectfully assert that the same basis for lack of motivation may be relied upon for any other *mere statement* in the improper attempt to imply that individual elements were individually known in the art, with regard to Watkinson and the Examiner's improper attempt to combine Watkinson with Sakazaki without providing the requisite motivation to establish a prima facie case of obviousness.

Dated: July 30, 2007

Respectfully submitted,

By  46463  
§ Michael K. Mutter WILKINSON TITOMB  
Registration No.: 29,680  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant